IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Revision No. 594 of 2001
(Old No. 839 of 1989)

Ram Prakash Sharma S/o Sri Biraj Bhan Sharma
R/o K.B. 24/11 Old Kawi Nagar
Ghaziabad …Revisionist

Versus

State of U.P. ..Opposite Party

Hon'ble B.C. Kandpal, J.

Case called out twice. None appears on behalf of the revisionist.

Heard learned A.G.A. and perused the record.

The present revision arising out against the order and judgment and order dated 26.05.1999 passed by Special Judge, Anti Corruption, Dehradun in Criminal Appeal No. 54 of 1988 maintaining the conviction of the revisionist awarded by Special Magistrate, C.B.I. in case No. 10 of 1981 under Section 60 Excise Act and under Section 9of the Opium Act.

Brief facts giving rise to this revision are that the revisionist Ram Prakash Sharma and Roshan Bahadur were challaned by the C.B.I. under Section 9 of the Opium Act and under Section 60 U.P. Excise Act. The chargesheet was submitted against those two persons before the court of Special Magistrate C.B.I., Dehradun

The accused – Resham Bahadur absconded during the course of trial, therefore, the trial continued against the accused/revisionist –Ram Prakash.

As per the record, the C.B.I. received a confidential report that the accused/applicant is having the opium and the hasish with him. On this, the C.B.I. team raided the scooter of

the accused and recovered opium and hasish from his possession.

The trial court came to the conclusion that the prosecution had established the charge leveled against the accused under Section 9 of the Opium Act and under Section 60 of U.P. Excise Act. Accordingly, convicted the accused and sentenced them for six months R.I. as well as one year R.I. in 90 of the Opium Act vide order and judgment dated 07.11.1988.

Feeling aggrieved by the aforesaid judgment and order the revisionist preferred the appeal before the court of Special Judge, Anti Corruption at Dehradun, which was also dismissed, vide judgment and order dated 26.05.1989.

The record shows that the accused/revisionist has nowhere denied his arrest and search at the spot, the accused/revisionist has also not adduced any evidence with regard to the fact that there was any motive on the part of the raiding party to falsely implicating in the case. The independent recovery witnesses produced by the prosecution have nowhere stated anything about false recovery of opium and hasis from the possession of the accused. It is true that the independent witnesses have not proved the prosecution case in toto but as far as the recovery part of the case is concerned, these witnesses could not be held to be unreliable.

The trial court has passed his findings after assessing the evidence on the record. The appellate court has also given sound reasoning while confirming the judgment of the trial court. I do not find any ground in this revision to interfere in the judgment and order passed by the courts below.

For the reasons stated above, I am of the view that the present revision being devoid of merits is liable to be dismissed.

The revision is accordingly dismissed.

The order dated 31.05.1989 releasing the revisionist on bail is vacated.

Let the file of this case be sent back to the court below so that the concerned Magistrate take steps against the accused/revisionist and keep the accused in custody in order to serve out the sentence imposed against him by the court below.

(B.C. Kandpal, J.)

30.07.2004
ASWAL